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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

NO.

SUPREME COURT OF THE UNITED STATES
October Term. 2000

IN RE: EARLENE POLYAK

On Petition for Writ of Mandamus
To The United States Court of Appeals
And The United States District Court
For The Sixth Circuit

PETITION FOR WRIT OF MANDAMUS

EARLENE POLYAK
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100 pp

QUESTIONS PRESENTED

1.Does the United States Court of Appeals Sixth Circuit's denial of filing Petition for Rehearing March 2,to pending denial of appeal of sanction in Appeal as a Right Rule 3,FRAP February 6,on same day Petition for Writ of Mandamus received by Supreme Court Clerk on March 2,2001 violate Constitutional right of redress provided in First Amendment?

2.Should this Supreme Court grant writ to inquire into the appropriateness of Court of Appeals injunction, importance of information sought, and adequacy of responses used to issue sanction to deny Appeal as a Right Rule 3,FRAP,and can Appeal as a right to sanction be questioned?

3.Does Tennessee Statute 35-5-101 et seq. allow for the seizure and sale of property at public auction without Constitutional right of jury trial for relief in damages violate Fifth Seventh, and Fourteenth Amendments, and 42 U.S.C. 1983, and is it unconstitutional?

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2000

IN RE: EARLENE POLYAK

PETITION FOR WRIT OF MANDAMUS

Petitioner prays that this Honorable Supreme Court issue a Writ of Mandamus pursuant to 28 U.S.C. 1651(a) to review the denial of Right of Appeal Rule 3, FRAP in original action filed under Article III, Sec. 2, in the United States District Court, Middle of Tennessee No.1:98-0026 Complaint and jury Trial Demand for relief in damages.

The Court of Appeals Sixth Circuit continues to deny right of appeal to District Court dismissals in denial of Constitutional right of a jury trial provided in the Seventh due process and any just compensation Fifth, due process and equal treatment in Partition in Kind 29-27-117 TCA in Fourteenth,and right of redress under First Amendments.

The Court of Appeals denies federal protection of Civil Rights 28 U.S.C. 1983.

OPINIONS BELOW

The opinions of the United States Court of Appeals Sixth Circuit are set forth in the Appendix A, and the opinions of the United States District Court, Middle District of Tennessee are set forth in Appendix B. And any opinions of the Courts of Tennessee are set forth in Appendix C.

JURISDICTION

The jurisdiction of this Supreme Court is invoked in the original jurisdiction under Article III Sec.2 , of the Constitution of the United States in 28 U.S.C. 1651(a)"in aid of the Court's Appellate jurisdiction, the exceptional circumstances warrant this Court's discretionary power , and that adequate relief cannot be obtained in any other form in any other Court.

The Complaint and Jury Trial Demand, nonconsent to Magistrate Jurisdiction was filed in the United States District Court, Middle District of Tennessee No. 1-98-0026 on February 12, 1998, and amended to add

issues and parties on February 17, 1998, under first time rule FRcivP.A motion to amend complaint to add issues of legal malpractice, and obstruction of justice against parties is included in complaint, but summons not issued. This complaint includes violation of United States Agriculture Act of 1998.

The court of Appeals finally filed the appeal 00-511 on November 11,2000.The timely and proper appeals to District court No,1:98 0026 to order March 4, and June 9, 1999 at a cost of two hundred ($210.00) dollars).

Court of Appeals appeal No. 00-511 included No. 99-509. 99-512/513.

The Court of Appeals denied Appeal 00-511 filed on October 11,2000,on February 6, 2001,on old Evans & Sons v Polyak 92-5240, and denied fiiing Petition for Rehearing in Judges Merrit, Hood order on March 2,001.

This Petition for Writ of Mandamus to order March 2, 2001 would be due and timely on ninety days on May 31, 2001.

The jurisdiction of the federal courts

is exclusive in matters governed by the U.S. Constitution and Acts of Congress 28 U.S.C. 1332.

The jurisdiction of the federal courts extends to actions taking place, and the amcunt over seventy-five ($75,000.00) dollars.

This jurisdiction is further invoked in 42 U.S.C. 1981, 1982, 1983, Civil Rights Acts of 1964, 1991, 28 U.S.C. 1443(1)(200 and most specifically in the First, Fifth, Seventh, and Fourteenth Amendments, and 28 U.S.C. 2403 may apply.

CONSTITUTIONAL PROVISIONS

The pertinent portions of the First Amendment provided:

> Congress shall pass no law...abridging the freedom of speech, the right of the people to redress for grievances.
> U.S. Const. Amend I.

The pertinent provisions of the Fifth Amendment provides:

> No...person shall be derpived of life, liberty or property without due process of law; nor shall any private property be taken for public use, with out just compensation.
> U.S. Const. Amend. V.

The pertent portions of the Seventh Amendment provides:

> ...where the value of ccntroversy shall exceed twenty dollars, the right of a jury trial shall be preserved.

U.S. Const.Amend VII.

The pertinent portion of the Fourteenth Amendment provides:

> No state shall make or enforce any law which shall abridge the priveleges or immunities if citizens of the United States; nor shall any state deprive any person of life liberty, or property.

U.S. Const. Amend XIV

28 U.S.C.1443 Any of the following commenced in a state court may be removed by defendant to a district court:

> (1Against any person who is denied or or cannot enforce in the courts of such state law providing for equal civil rights of citizens of the United States.
>
> (2) for any act under the color of authority deprived from any law providing equal rights.

42 U.S.C. 1981:

> All persons within the jurisdiction of the United States shall have the ssme right to ...sue to the full and equal benefit of all laws.

42 U.S.C. 1982:

> All persons in the United States shall

have right in every state...to inherit purchase lease and convey real and personal property.

42 U.S.C.1983:

> Every person who under the color of any statute, ordinance, regulation, custon or usuage of any state...subject any citizen of the United States within its jurisdiction thereto the deprivation of priveleges secured by the Constitution and its laws shall be liable in equity or other proper proceeding.

28 U.S.C. 2403:

> In any action where the constitutionality of a statute is drawn into question.

29-27-117 Partition in Kind TCA:

> If exact partition cannot be made with out material injury to the parties or "some one of them," the commissioners may make the partitions as nearly equal as they can, and charge the larger shares with the sums necessary to equal ize all sgares.

STATEMENT OF THE CASE

The Court of Appeals Sixth Circuit has denied right of appeal on all appeals to dismissals of Ccnstitutional right of a jury trial for relief in damages on res judicata including new cause and new case filed under original jurisdiction Article III Sec. 2 in District Court No. 1:98-0026 filed on

February 12, 1998 in Complaint and Jury Trial Demand, Non-consent to Magistrate jurisdiction No. 1:98-0026, and complaint amended to add issues and parties on February 17, 1998, dismissed on res judicata on March 4, 1999, res judicata (App. B.p.28), and again on June 9, 1999 (App. B. p. 26).

Both orders were appealed in Right of Appeal Rule 3, FRAP at a cost of two hundred ten ($210.00) dollars.

The original jurisdiction complaint for the constitutional right of a jury trial for holding rights, investments, and interest in investments by the courts of Tennessee for over fifteen (15) years, without constitutitutional right of a jury trial in violation of the Seventh Amendment was filed against the Honorable Charles Burson, Frank Hulen Estate, Dora Lee Hulen and Wilma Lesnansky.

After the Court ordered sale at public auction without constitutional right of a jury trial for relief in damages without any just compensation in violation of the Fifth

Amendment and 28 U.S.C. 1983, Petitioner removed orders for sale under 42 U.S.C. 1441 from state court and amended original order to add issues of violation of constitutional rights Fifth and Fourteenth and 28 U.S.C. 1983 to add parties involved in action the Honorable Jim Hamilton Circuit and Chancery Judge; Gerald Wilson.Circuit Court Clerk, Dalton Mounger, and Geneva Frisbee Clerk and Master.

The orders removed were Chancery Court Nos. 7951-96 Dismissal of Counter claim pending appeal in the Court of Appeals No. 97-508 (App. A.p. 16, 7951-96 Judgment on the pleadings on February 10, 1998, and Circuit Court No. CC: 452-98 Plaintiff's Exception to Executrix. Chancery No. 7951-96 Order for Sale was filed on February 11, 1998.

The above orders were ruled upon by the Magistrate Judge and dismissed on December 15, 1998 (App. B.p.31) over Petitioner's objections and Dismissal affirmed by District Judge on res judicata on March 4, and June

9, 1999.

This original order filed for constitional right of a jury trial denied in state courts is not to be confused with removal of previous Third Complaint against Petitioner to sell her rights, investments and interest in investment filed by counsel Dalton Mounger on May 10, 1996 Chancery No. 7951-96.

Petitioner removed Chancery No. 7951-96 immediately upon notification of filing against Defendant under Diversity of Citizenship and amount in controversy and was granted order of removal on June 19, 1996 District Court No. 1-96-0112.

Petitioner objected order referring 1-96-0112 to District Court Magistrate Judge on June 19, 1996(App.B.p.24).

The Magistrate Judge dismissed No. 1-96-0112 on res judicata and case was remanded back to Chancery Court on November 5, 1996.

Counsel for the Defendants Frank Hulen Wilma Lesnansky and Dora Lee Hulen filed a motion for hearing in Chancery Court with-

out notifying Petitioner and hearing was held without her presence on February 10, 1996,and resulting orders were removed again to amend original District Court No. 1:98-0026 to add issues and parties.

The Magistrate Judge did not remand any part of removed orders under 28 U.S.C. 1441, and ruled on all of the issues in his Report and Recommendation on December 15, 1998(App.B p.46).

In fact the Magistrate Judge just copied from Report and Recommendation in dismissal on res judicata for the second time (App. B. p.39).

The Court of Appeals denied appeal in dismissal of counter-claim 97-508(96-0112 held from January 17,1997 over one (1) year to dismiss on old Buford Evans v Polyak injunction order 92-5240, on March 10, 1998 after orders of sale on February 10, 1998.

The Court of appeals denied Petitioner's application for injunction against sale on old Buford Evans & Sons v Polyak on March 12,

1998, No. 97-508(App.A.p.16).

The Court of Appeals denied Petition for Writ of mandamus to the District Court to schedule Constitutional right of a Jury Trial 99-502 (D.C. No. 1:98-0026) on old Buford Evans & sons injunction No. 93-5240 (App. A. p. 11).

The Court of Appeals denied Petition for rehearing denial 99-502 (D.C. No. 1:98-0026) on old Buford Evans & Sons v Polyak on March 5, 1999 (App. A. p.14).

In addition the Court of Appeals Chief Deputy Clerk sent letter to District Court Clerk January 9, 1997,with copy of injunction against Petitioner 's appeal on old Buford Evans & Sons v Polyak 92-5240(App. A. p. 18).

The Court of appeals misrepresents the fact that Buford Evans & Sons never filed any complaints or appeals in the federal courts No. 92-5240(App. A.p. 20).

Buford Evans & Sons conducted survey of Said property without Petitioner's knowledge or permission for Chancery Court of

Tennessee. He did not have a surveyors license in the state and his survey is invalid against Petitioner.

Petitioner was obligated to file an Application for Leave to AppealPursuant to Court Order Seeking Leave to File and affix a copy of injunction to application(App.A. p. 20).

The Court of Appeals denied first application for leave to appeal No. 99-509 (1:98-0026) on Buford Evans & Sons v Polyak on June 22, 1999(App.p. 10).

The Court of appeals denied petition for rehearing 99-509on October 15, 1999 (App. A.p.9).

The Court of Appeals denied application for leave to appeal 99-512/513 (1:98-0026) on Buford Evans & Sons v Polyak injunction On July 5, 1999 (App. A. p.8)

The Court of Appeals denied application for petition for rehearing on Buford Evans & sons v Polyak on September 19, 2000.(App. A.p. 7).

After denying all appeals as applications for leave to file on old Buford Evans & sons v Polyak injunctions, and while a petition for writ of certiorari pending in the Supreme Court, Petitioner received a notice of filing appeal in the Court of appeals No. 00-511 on October 11, 2000(App. A.p.5).

Petitioner heard that the Supreme Court sent some cases back to the Courts.She submitted a Motion for Status Report and Briefing Schedule on October 11, 2000 (App. A.p. 6).

Petitioner received an order denying leave to file pursuant to Buford Evans & Sons old order 92-5240 on February 6,2001 beforeMerrit , Cole , Circuit Judge and Hood District Judge (App. A.p. 4).

Petitioner received an order denying rehearing No.00-511 on March 2, 2001 order Petition for rehearing not accepted for filing,before Merrit and Cole, Circuit Judges and Hood, District Judge (App.A.p.3).

Petitioner believes that the order before the UNited States Court of Appeals Sixth Circuit before Merritand Cole, and District Judge to Appeal No. 00-511 filed on October 11, 2001 denied hearing on March 2, 2001 is a valid order for review.

The Supreme Court of Tennessee denied petition for rehearing application for permission to appeal (App. C.p.51).

The Court of Appeals filed Motion for the Honorable Jim Hamilton for rescual on November 5, 1999, but no action.

This Supreme Court denied Petition for Writ of Certiorari No.99-1484, and Petition for Rehearing .She has no relief.

Petitioner does not have any knowledge or expertise in the legal profession, but she believes that the Courts were created in the Constitution for the relief of the people.

Petitioner's rights, investments and interests will soon be sold at public auction

Petitioner submitted Motion for Leave to file Petition for Writ of Mandamus 3/ 5/01.

ARGUMENT

1. THE COURT OF APPEALS SIXTH CIRCUIT'S DENIAL OF APPEAL AS A RIGHT RULE 3,FRAP IN EXCEPTIONAL CIRCUMSTANCES WARRANTS THE EXERCISE OF OF THE SUPREME COURT'S DISCRETIONARY POWERS

Petitioner submitted a Motion for leave to File Petition for Writ of Mandamus pursuant to 28 U.S.C 1651(a) to review the United States Court of Appeals denial of Right of Appeal Rule 3, FRAP on res judicata, to dismissal or original action filed in the United States District Court, Middle District of Tennessee of Complaint and Jury Trial Demand Non-consent to Magistrate No.1:98-0026 filed on February 12, 1998, under Article III Sec.2, dismissed on res judicata, received by this Court on March 2, 2001.

But the Court of Appeals denied Petition for Rehearing denial of Appeal on March 2, 2001, same day Motion for Leave for Petition received in the Supreme Court. The Clerk sent letter to prepare in compliance with Rule 33. 1,Rules of the Supreme Court on March 5, 2001

The Complaint and Jury Trial Demand for

relief in damages for the state court holding Peititioner's right, investments, and intersts for over fifteen (15) years without constitutional right of a jury trial provided in the Seventh, due process of any just compensation provided in the Fifth, equal protection under Partition in Kind 29-27-117 TCA as provided in the Fourteenth and right of redress provided in the First Amendments, and the deprivation of privleges secured by the Constitution pursuant to 42 U.S.C. 1981, 1982, 1983.

The Court of appeals issued injunction against Petitioner on old Buford Evans & Son v Earlene Polyak 92-5240 on January 11, 1983.

The Court of Appeals has denied Right of Appeal Rule 3,FRAP on all appeals on res judicata on Evans v Polyak 92-5240 on Petition for Writ of Mandamus to issue to District Court to grant jury trial in 99-502, February 9, and Petition for Rehearing on March 5, 1999.

The court of Appeals denied Right of

to 99-509 on June 22, and Petition for Rehearing onOctober 15, '999 on old Buford Evans & Sons v Polyak 92-5 10.

The Court of Appeals denied Right of Appeal rule 3, FRAP on disnissal on res judicata by District Court on 39 -512/513 on old Buford Evans & Sons V Polyak 92-5240 on July 5, 2000 and Petition for Rehearing on December 19, 2000 on 92-5240.

But the Court of Appeals filed Appeal No. 00-511 on October 11, 2000 after Supreme Court conviened first of October 2000.

The Court of Appeals denied Appeal as a Right Rule 3, FRAP again on old Buford Evans & Sons v Polyak 92-5240 on February 6, 2001, and denied filing Petition for Rehearing 00-511 on March 2, 2001, the same day Petitioner submitted motion for Leave for Writ of Mandamus March 2, 2001. This motion addressed to Justice, but Clerk Returned unfiled.

The Court of Appeals misrepresents the fact that Buford Evans & Sons never filed a

complaint or answerin the federal courts in United States District Court or Court of Appeals for the Sixth Circuit.

Petitioner believes the exceptional circumstances in which pro se litigant is denied Appeal as a Right Rule 3 FRAP, on sanction injunction for res judicata affirming District Court dismissals on new cause and new Case filed under original jurisdiction 1:98-0026 on old Buford Evans & Sons 92-5240,and granting state judge "judicial Immunity 1:83-003 warrants the Supreme Court's discretionary powers as in Thresa L. Cunningham v Hamilton County, Ohio 98-727 on June 14,1999 Supreme Court Decision.

> "an evaluation of the appropriateness of sanctions may require the reviewing court to inquire into the importance of the information sought or the adequacy of the truthfulness of a response.Thomas E. Hoar,Inc. v Sara Lee Corp.,882 F 2d 682(CA2 1989), Outley v New York, 837 F 2d 587, 590-591(CA2 1988)Evanson v Union Oil of Cal, 619 F 2d 74 (Temp.Emergy Ct App. 1980) Cunningham v Hamilton County Ohio, argued April 17 decided June 14, 1999.

Although the above case involves a

lawyer sanctioned and discussion of contempt, the right of appeal is upheld"The right of a nonparty to appeal an adjudication of contempt cannot be questioned." Justice Kennedy Concurred) Cunningham v Hamilton County Ohio (Supra).

2.THE COURT OF APPEALS SIXTH CIRCUIT VIOLATES ITS OWN SANCTION AFTER FILING APPEAL

The Court of Appeals violates its own injunction after filing Appeal No. 00-511 on October 11, 2000, but denied on February 6, 2001, on old Buford Evans & Sons v Polyak 92-5240 without issuing a biefing schedule for Main Brief, Answer Brief and Reply Brief and Appendix. In fact, there is no proof the Court has called for the record.

Petitioner submitted complete Petition for leave to appeal and petition for rehearing fifteen(15) copies on February 16, 2001.

> Upon receipt of a complete petition for leave to appeal, the court shall direct the clerk of the appropriate court to transmit the full record of the underlying case...this court has reviewed the petition and record to present whether Polyak's appeal presents a colorable claim.(App.A.p.22).

3. THE COURT OF APPEALS SIXTH CIRCUIT VIOLATES ITS SANCTION AS REVIEWING COURT TO INQUIRE INTO IMPORTANCE OF INFORMATION SOUGHT AND ADEQUACY OF TH THFULNESS OF RESPONSES

The court of Appeals violates its sanction as a reviewing Court to inquire into the importance of Buford Evans & Sons v Polyak 92-5240.

Buford Evans & Sons went upon property to survey without Petitioner's knowledge or permission for sale at public auction, disregarding settlement agreement with division in strips north & South. with paved road front age. The auctioneers try to sell property by parcels and then as a whole.Evans & Sons did not have a surveyor's license in Tennessee and case should be set aside on Rule 60.(b) FRUD(whether intrinsic or extrensic) and mis representation by adverse party"FRcivP.

On March 13, 1998, Gerald Wilson Circuit Court Clerk removed lein on Petitioner individual property placing it on her car, bragging the he "was going to take her white caddilac". Mr. Wilson obstructed Petitioner

getting necessary papers to keep property from being sold, and tried to put her disabled husband on crutches on the street, without any transportation to pay Buford Evan &Sons six hundred ninety($695.00) owed by the Defendants Frank Hulen and Wilma Lesnansky

> The right to travel embraces three different components:the right to enter and leave another state;the right to be to be treated as welcome visitor while temp orarily present in another state,...the right to treated like citizens of that state.Rita L.Saenz,California Director of Social Services et al.Petitioner Doe etc. No. 98-97 1/13/1999(S. Ct Syllabus).

Dalton Mounger counsel for Defendant Frank Hulen Estate, Dora Lee Hulen and Wilma Lesnansky filed motion for hearing on January 30, 1998, without notifying Petitioner, while Appeal No. 97-508(1:96-0112)pending is Court of Appeals, and hearing was held before the Honorable Jim Hamilton, state Judge, without Petitioner's presence and property ordered sold at public auction violating fuidiciary duty and Legal MalpracticeBlacks Law Cpyright 1991West Pub. Co.

Due process of law implies the right

of a person affected thereby to be present before the tribunal which pronounces judgment upon life liberty and property, (Supra)

Notice by mail or other means as certain to insure actual notice is a minmun constitutional pre condition to a proceeding which adversly affects the liberty or property interests of nay party whether unlettered or well versed. New York City v New York. N.H & R.Co344 US at 297 73 S Ct at 301.

Mounger misrepresents fact that he is charging for his own representation and for his clients in other cases, and Petitioner alreay charged six thousand ($6,000.00).

When attorney recklessly creates costs, the other side is entitled to relief 28 U.S.C. 1927

The Court of Appeals did not inquire in to Petitioner's contention the Defendant Wilma Lesnansky sold U.S. federally alloted burley tobacco on said property allotement raised on another farm under in violation of U.S. Agriculture Act of 1938,Sec. 318 Title 18 Sec 1001 U.S. criminal Code.

4. THE COURT OF APPEALS SIXTH CIRCUIT OVER LOOKS REVIEW OF WHETHER SALE OF PROPERTY AT PUBLIC AUCTION UNCONSTITUTIONAL AND CONFLICT WITH SUPREME COURT DECISIONS

The sale of property at public auction under 35-5-101 et seq. conflicts with laws of the state is it is unconstitutional.The sale of property at public auction conflicts with partition in Kind 29-27-117 TCA.

> If exact partition of property cannot be made without material injury to the part ies or some one of them, the commissionr may make the partitions as equal as they can and charge the larger shares with the sums necessary to equalize all share

Petitioner was adversley discriminated against when two of three State Judges divided under Partition in Kind, but her property was odered sold at public auction.

The Honorable James Weatherford divided property between grandmother and children in Wayne County, and Judge Robert Jones divided property between sisters Phaler v Watson No. 80-83 under partition in kind in Maury County, adjoining Counties.

The sale advertised in local paper when statute for general circulation, sale must be held open for advance bid ten (10) days but sale to be final on day of sale in Virginia Frisbee Clerk & Master adverse to proceeds.

...appellant can consider the fact of insufficient advertising in connection with other facts in case to determine why land did not bring adequate price. Napier v Stone,21 Tenn.App. 114 626 S.w. 2d (1937).
Sale of land for which mortagor paid paid $450 was set aside where sale was unadvertised and consideration was only $177 (Supra).

It is assumed that rule in Tennessee is that strict foreclosure is valid if fully supported by every condition when there is no provision for personal service and no redemption permitted,Higbee v Chadwick, 22 Tenn. 873(1915).

The holding of property by the State for over fifteen (15) years conflicts with U.S. Supreme rulings.

...taking of property unconstitutionally confiscates private property without just compensation, and these basic right of possessed interests" are set forth in Seawall v New york City544 N.Y. 2d 542 (S Ct Appendix 19890.
...whole and equal use of her investment and without economically viable use of her property, Situim v Tahoe Regional Planning Agency,117 S.Ct 1659(1977)

There is no question of eminent domain or cause for unconstitutional sale.

A sale for partition ,where there is no to show necessity of sale, will be set aside. Bradbury v Martin, 3 Shannon 469 (1979).

Petitioner is being treated differently

from others similarly situated and there is no rational bais for different treatment, it is intentional and arbritrary discrimination.

> The purpose of the equal protection clause in the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional arbitrary discrimination,whether occasioned express terms of a statute or its improper execution through duly constituted Agents. Village of Willowbrook et al.,v Grace Olech, No. 98-1288 (S Ct. Feb. 23 2000).

5. PETITIONER CONTENDS THAT THE GRANTING OF PETITION FOR WRIT OF MANDAMUS TO REVIEW THE COURT OF APPEALS SIXTH CIRCUIT'S DEN- APPEAL AS A RIGHT RULE 3, FRAP IS AN EXCEPTIONAL CIRCUMSTANCE AND WARRANTS THE EXERCISE OF THE SUPREME COURT'S DISCRETIONARY POWERS TO AID IN APPELLATE JURISDICTION

Petitioner contends that the granting of petition for writ of mandamus to review the Court of Appeals denial of Right of Appeal Rule 3, FRAP is exceptional circumstances which warrants the Exercise of the Supreme Court's discretionary powers over the lower Courts, and support the Legislature's powers of protecting the constitutional right of the people.

It is evident that many have been denied access to the Courts by the Supreme Court's load of cases in which eighteen (18 hundred were denied petitions in September 1999 and it was stated that the Supreme Court returned cases to the lower Courts in September of 2000. This appeal was filed after the Supreme Court convened in September, 2000.

The District Court appears to be abstaining from exercising federal jurisdiction under the Constitution"as to matters governed by the U.S. Constitution and Acts of Congress ...304 U.S. 46 58 S Ct 817 82 L Ed 118.

> Erie Railroad v Tompkin requires federal court to give some equitable remedies in diverstiy case, the only qualification being that federal court have power to grant relief. Erie Railroad v Tompkin Moores K.F. 8716.5M 661.
>
> The jurisdiction of the District Court arising from d verse citizenship extend to the entire suit, and to every question state or federalin its determination. Wichita Light Co. v Public Utilities Co.Kans 1922, 43 S.Ct 51 26 U.S. 67 L Ed 124.

Petitioner believes that granting Writ of Mandamus 28 U.S.C. 1651(a) is justified aid to Supreme Court's Appellate Jurisdic-

tion, and the United States Legislature's new legislationto protect the constitutional rights of injured parties deprived of rights and property rights secured by the constitution to expide access to federal courts in Bill No.2732 introduced on June 29 1999, but it stll has to be approved by the senate.

> To expidite access to Federal Courts for parties whose rights and priveleges secured by the Constitution have been deprived by final actions of federal agencies, and other government officials or entities acting under the color of state law; prevent Federal Courts from abstaining from exercising jurisdiction ... (any claim under 42 U.S.C. 1983).

It appears that the legislature is trying to help people denied constitutional right of a jury trial before their property is sold at public auction against their will and Petitioner mentions 28 U.S.C. 2043.

> ...it appears that local courts are try ing to change federal laws,the most significatn of most small towns politics is the frequency with which the legal procedural requirements are overlooked and ignored, so as take account of unique conditions, such as personalized government even at the local level can be intimate and effective...Wood, Suburbia 278-80(1958).

The state has never granted Petitioner the constitutional right of a jury trial for relief in damages of holding her rights investments and interest in investment held over twenty(20) years.

> A denial of jury trial violates the Fifth Seventh and Fourteenth Amendments right of a property owner to fix at price which will have inherent attribute of property itself and is within the protection of the Fourteenth Amendment. Schwegmann Bros.Giant Supermarkets v Lily & Co. Ca La 1953 Amen. 14 Due process

The State held hearing and ordered proerty sold without notification and without Petitioner's presence.

> ...this Court recognized that prior to and action which will affect an interest Life or property prorected by the Fourteenth Amendment,a state must provide Notice reasonably calculated, under all circumstances, to appraise interested parties of the pendency of an action and afford them an opportunity to present their objections.Invoking this fundamental requirement of due process. Mulanc v Hanover Bank & Trust Co., 339 U.S. 306 314 70 S Ct 652 657 94 L Ed 865(1950).

CONCLUSION

Petitioner prays that this Honorable Supreme Court issue Writ of Mandamus to review the denial of Appeal as a Right Rule 3 FRAP

by the Court of Appeals Sixth Circuit to the dismissal of original action in District Court No. 1:98-0026 for the Constitutional right of a jury trial for relief in damages, and remand this case back for the Constitutional right of a jury trial for relief in damages in the District Court of the Middle District of Tennessee, before a unbiased tribunal,and any other such relief this Court deems fair and just.

On the 28th day of May, 2001.

Respectfully submitted,

Earlene Polyak
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-
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Jupiter, Florida 33458
(561) 743-9544

I certify the above true to the best of my belief and Knowledge.

_____
EARLENE POLYAK

STATE OF FLORIDA
COUNTY OF PALM BEACH

_____
NOTARY PUBLIC

My Comn' expires:

CERTIFICATE OF SERVICE

I certify that a true copy of this Petition for Writ of Mandamus has been mailed to all of the parties on the attached pages or their representatives and to Mary Byrd Ferrara Ass. Attorney General, 425 Fifth Ave. North Nashville, Tennessee 37243, John D Swalb, Spicer Flynn Ludstrom, 211 7th Ave. North Nashville, Tennessee 37219, and Dalton Mounger 806A Garden St., P.O. Box. 1468, Columbia, Tennessee 38402 on the _____day of _____ 2001.

_____
EARLENE POLYAK

CERTIFICATE OF SERVICE

I certify that a true copy of this petition for writ of mandamus has been mailed to the parties or the representatives of interested parties as follows on the_____ day of _____2001.

The Honorable Janet Reno
Attorney general of the United States
950 Pennsylvania Ave. Room 400
Washington District of columbia 20543

The Honorable Charles Buson
Attorney General of Tennessee
425 Fifth Ave. North
Nashville, Tennessee

The Honorable Don Sundquist
Governor of Tennessee
State Capitol
Nashville, Tennessee 37243

Frank Hulen Estate
35 Jonestown Road
Summertown, Tennessee 38483

Dora Lee Hulen
35 jonestown Road
Summertown Tennessee 38483

Wilma Lesnansky
29 Jonestown Road
Summertown, Tennessee 38483

The Honorable Jim Hamilton
Chancery and Circuit courts
240 West Gains Street
Lawrenceburg, Tennessee 38464

Gerald Wilson.Clerk
Circuit Court of Lawrence County
240 West Gaines Street
Lawrenceburg, Tennessee 38464

Geneva Frisbee, Clerk and Master
Chancery Court of Lawrence County
240 West Gaines Street
Lawrenceburg, Tennessee 38464

Dalton Mounger
Attoney at law
806A South Garden Street
P.O. Box 1468
Columbia, Tennessee 38402

APPENDIX A

In the United States Court of Appeals for the Sixth Circuit Nos. 00511,99-509,99-512, 513.

Earlene Polyak v The Honorables Charles Burson; Frank Hulen Estate; Dora Lee Hulen; Wilma Lesnsnsky; The Honorable Jim Hamilton, Circuit Court and Chancery Judge; Jerald Wilson, Circuit Court Clerk;Dalton Mounger; and Geneva Frisbee, Clerk and Master; filed in the United States District Court, Middle District of Tennessee No.1:98-0026 original order filed Feb.12, amended Feb.17, 1998.

Notice of Appeal filed: May 30, 1998, No.99-509, Amended 99-512 on July 1, 1999, Amended 99-513 on July 1, 1999 $105.00 and $'05.00, Appeal filed No.00-511 October 11, 2000.

Denied: June 22, 1999.

Before BOGGS, NORRIS AND BATCHELDER

Denied:July 5,2000

Before: MARTIN,Chief Judge, Wellford,and BATCHELDER Circuit Judges.

Appeal filed: October 11, 2000

Appeal Denied:Feb. 6 2001

Before:MERRIT and COLE, Circuit Judges and HOOD U.S. District Judge for the Eastern District of Kentucky.

Petition for Rehearing En Banc denied: March 2, 2001.

Before:MERRIT and COLE Circuit Judges, and HOOD, District Judge for the Eastern District of Kentucky.

00-0511

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

Plaintif-Appellant

v

FILED MAR 02 2001

CHARLES BURSON et al., ORDER

Defendants-Appelles

BEFORE:MERRIT and COLE Circuit Judges;and
HOOD District Judge.

Upon consideration of Appellant's petition for rehearing en banc, it is ordered that petition not be accepted for filing.

ENTERED BY ORDER OF THE COURT

s/Leonard Green ji
Clerk

Hon, Joseph M. Hood U.S. Dist
for the Eastern District of Kentuckey
sitting by Desigration.

No. 00-0511

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

Plaintiff-Appellant

FILED FEB 6 2001

v

CHARLES BURSON, et al.,

Defendant-Appellee

Before:MERRIT and COLE,Circuit Judges,
HOOD District Judge.

Earlene Polyak applies for leave to file pursuant to this Court's order entered in Buford Evans & Sons v Polyak No. 92-5240,1992 WL 3011959 at *2(6th Cir. Oct. 20 1992)(order)

Upon review, the application is hereby denied.

ENTERED BY ORDER OF THE COURT

s/Leonard Green ji
Clerk

The Honorable Joseph M. Hood U.S. District Judge for the Eastern District of Kentucky, sitting by designation.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Leonard Green
Clerk

FILED OCTOBER 11,2000

Ms. Earlene Polyak
145 Lakeside Drive
Jupiter, Florida 33458

RE: Case No. 00-511
Polyak v Burson
District Court No. 98-0026

Your appeal has been docketed today as case number 00-511. The case number and official caption, as it appears on the the enclosure, must be on all documents submitted for filing in this case.

s/Julie M. Brock
Case Manager

cc: Ms. Mary B. Ferrara

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

Appellant

FILED OCT 11 2000

v

Case No. 00-511
Dis. No. 98-0026

BURSON et al.,

MOTION FOR STATUS REPORT
AND BRIEFING SCHEDULE

Appellant motions for status report and briefing schedule to Appeal No. 00-511,District Court No. 1:98-0026 docketed on October 11, 2000.

There were no enclosures referred to in notice of filing appeal on October 11, 2000, in letter from Julie M. Brock Case Manager.

I would like to thank you for your corporation.

I certify that a true copy of this motion has been mailed to Ms. Mary B. FErrara Att. General , 425 5th Ave. N. Nashville, Tennessee 37243 John D. Swalb, 211 7th Ave. Nashville, Tenn. and Dalton Mounger P.O. Box 1468 Columbia, Tenn 38402 on 30th day of October,2000

s/ Earlene Polyak

No. 99-512/513
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK FILED SEPT 19

Petitioner

v

CHARLES BURSON et al.,

Respondent

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel but to all of the active Judges of this Court, and no Judge having requested a vote on the hearing en banc, the petition has been referred to the original panel.

The panel further reviewed the petition and concludes that the issues raised in the petition for rehearing en banc were fully considered upon the original decision of the case.

The petition is denied.
ENTERED BY ORDER OF THE COURT
s/ Leonard Green

Nos. 99-0512/0513
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

FILED JUL 05 2000

Petitioner

v

CHARLES BURSON et al.,

Respondents

Before: Chief Judge; WELLFORD and BATCHELDER Circuit Judges,

Earlene Polyak applies for leave to file pursuant to this Court's order entered in Buford Evans & Sons v Polyak No. 92-5240, 1992 WL 301959 at &2(6th Cir Oct 20, 1992.

Upon review the applicationa are hereby denied.

ENTERED UPON ORDER OF THE COURT

s/Leonard Green

No. 99-0509

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

FILED OCT 15 1999

Plaintiff-Petitioner

v

CHARLES BURSON et al.,

BEFORE: BOGGS, NORRIS and BATCHELDER Circuit Judges.

Earlene Polyak has filed a petition for rehearing her application for leave to file pursuant to this Court's order in Buford Evan & sons v Polyak No. 92-5240 WL 1992 at(6th Cir Oct 20, 1992)(order).

Upon careful onsideration this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order.

Thi petition for rehe: ing is thus denied.

ENTERED BY ORDER OF THE COURT
s/Leonard Green
Clerk

No. 99-509
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK FILED JUN 22 1999

Petitioner-Plaintiff

v

CHARLES W. BURSON et al.,

Before: BOGGS, NORRIS, BATCHELDER,Circuit Judges.

Earlene Polyak applies for leave to file pursuant to this Court's order entered in Buford Evans & sons v Polyak No. 92-5240, 1992 at WL 301959 at *2(6th Cir, Oct 20, 1992.

Upon review the application is hereby denied.

s/ Leonard Green ji

No. 99-0502

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

FILED FEB 9 1999

Petitioner

Before: SILER,BATCHELDER and COLE, Circuit Judges.

The petitioner has submitted to this court a document styled as an"Application for leave for permission for application for stay f **WRIT OF MANDAMUS** for jury trial demand for relief in injunctive and compensatory and punitive damages. Although she fails to state the particular relief she seeks from this court or the district court to stay the pending sale of real estate included in her mother's estate.

Because of the voluminous and repititious litigation filed by the petitioner in regard to state court proceedings involving her mother's estate, this court entered an order on January 11, 1993, enjoining the petitioner from filing, instituting,continuing or prose-

cuting any civil action in this or any other federal court in this circuit without first obtaining leave of the court. This court further required the petitioner , in seeking such leave, to certify that any claim present ed proposed action are new claims never before raised and exposed of on merits by any federal court.Among the future filings which this court specifically enjoined was ltitigation originating from the partition sale of land in Tennessee inherited by Mrs Polyak and her siblings as tenants in common. The court also provided that any motion for leave to appeal to this court must be captioned Applicantion pursuant to court Order Seeking leave to file, and must have attached thereto a copy of the January 12,1933 order. A failure to strictly comply with the terms of that order the court warned would be grounds for summarily denying leave to file. See Buford Evans & Sons v Polyak No. 92-5240(6th cir Jan. 11, 1993)unpublished)

The present application does not meet several of the requirements set forth in the above order. In addition to the fact the application is not in the required form,the subject matter of the application appears to be posed partition sale of inherited Tennessee land an issue which is expressly enjoined from further federal court litigation under the 1993 order.

it is therefore ordered that the application filed by the petitioner is denied.

ENTERED BY ORDER OF THE COURT

S/leonard Green ji
Clerk

No. 99-502

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In Re: EARLENE POLYAK

FILED MAR [illegible] 1999

Before: SILVER, BATCHELDER and COLE, Circuit Judges.

The petitioner has submitted to this court an application for leave to commence a civil action, the apparent goal of which to stay pending partition sale of land inherited by the petitioner and her siblings,The Application was denied in order on February 9, 1999 The petitioner how seeks rehearing of her application.

In 1993, this court entered an order requiring the petitioner to seek prior approval from any federal court in this circuit before filing instituting, continuing or prosecuting any civil action. The order provided strict instructions in this case. Also, the 1993 order enjoined the petitioner from further litigation in federal court originating from partition sale of inherited land.Although the petitioner filing asserts that recent activity

in the state courts give rise to her claims not raised in prior litigation, the subject of proposed litigation is the partition sale of land falls within this prohibition.

It is therefore ordered that the petition for rehearing is denied.

ENTERED BY ORDER OF THE COURT

s/ leonard Green ji
CLERK

No. 97-508
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In Re: EARLENE POLYAK

Petitioner FILED MAR 12 1998

BEfore: KRUPNANSKY,NELSON,and BATCHELDER
Circuit Judges

The petitioner has submitted to the cour for an injunction enjoining the sale of real estate, pursuant ot order of the Chancery Court of Lawrence County, Tennessee scheduled for March 14, 1998.She asserts such an injunction is needed because the state courts denied a jury trial in the underlying estate proceeding for partition of property.

In the order on January 11, 1993, this court enjoined the petitioner from filing further appeal in this court unless she first filed application for leave to appeal and certified that the claim or claims to be raised were new and had never been presented or disposed of on merits by any federal court The order expressly prohibited the petitioner from presenting, in`ter alia, any claims

related or arising from the partition sale of land inherited by Mrs Polyak and her siblings as tenants in common. The petitioner in such application for leave to appeal in this case and in order March 10, 1998, we denied such application on grounds it did not comply january 11, 1993 injunction.There is nothing presented in the present application for injunctive relief which would warrant reconsideration of that order or a different result

It is therefore ordered that the application for injunction is denied.

ENTERED BY ORDER OF THE COURT

s/leonard Green ji
CLERK

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

anuary 9, 1997

Roger Milan Clerk
Middle district of Tennessee
801 Broadway U.S. Courthouse
Nashville, Tennessee 37203

Re: Notice of Appeal in 1:96-0112

The district court clerk's office has transmitted the customary appeal packet in case to our office.Because of injunction entered by the Court of Appeals in 1993, which sets conditions on Mrs Polyak initating appeals, the Clerk's office will NOT be acting on the transmittal.

In case No. 92-5240,Buford Evans & Sons v Earlene Polyak, the court enjoined Mrs Polyak from filing an appeal unless she filed an Application pursuant to order seeking leave to file and the Court granted application. The Injunction is broader than what I have described. I am enclosing a copy so you can read the terms. As to this attempted appeal form Judge Wiseman's (sic Hon. Thomas Higgins) order of November 5, 1996, she did not file the required application,only motion the Court of Appeal for protective order which will be returned unfiled.

A final note: Mrs Polyak did apply for permission to appeal the Magistrate's underlying October 15th report and recommendation, but the court denied application(a copy of order is also enclosed). A motion for reconsideration is pending.

If you have any questions about injuction please call me at Clerk's office.

Sincerely yours,
Janice Yates,chief Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON,D C 20543

William Suter
Celrk of the Court March 11 1998

Re: Ms Earlene Polyak

Dear Ms. Polyak:

Your application for injunction on March 6, 1998 is herewith returned for the following reason:

For the reasons stated in my letter March 3, 1998. In Addition, I checked with the Sixth Circuit and they do not have a request for an injunction pending there is no record that you have requested this relief from the lower Courts. Your check for the amount of $300 is again returned.

Sincerely,
William K. Suter Clerk
s/Cynthia Rapp
202-479-3031

No. 92-5240

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BUFORD EVANS & SONS
Plaintiff-Appellee FILED JAN 11 1993

v

EARLENE POLYAK

DEfendant-Appellant

BEFORE: KEITH, NELSON and RYAN Circuit Judges.

This case is before the court on Mrs. Earlene Polyak's response to show cause order issued by this court. The shcw cause order requested Mrs. Polyak to indicate why injunction should not be entered against her to prevent her from filing contined frivolous litigation. We have examined Mrs Polyak's response and it contains no arguments that would prevent the issuing of an injunction. Mrs Polyak's repetitious litigation makes the entry of such injunction appropriate. See Lysiack v Comun 816 F 2d 311 312-13(7th Cir. 1987).

Upon consideration of the court it is here by ordered that Mrs Polyak be enjoined from filing, instituting, continuing or prosecuting

any civil action in this or any other federal court in this Circuit without first obtaining leave of that Court.

In seeking leave to file, Mrs Polyak shall certify that the claim or claims she wishes to present are new claims never before raised and disposed of on the merits by any federal court .

Such claims may not be related to or arise from the following litigation; litigation originating from the partition sale of land in Tennessee inherited as tenant in common, objection to fee sanctions for which review has been exhausted, or claims against any state or federal judge, officer or employe for actions taken in the course of their official duties exercised in connection with Mrs Polyak's previous litigation. She shall certify that her action is taken in good faith and that the claims she raises are not frivolous or malicious.

A motion for leave to appeal must be captioned Application for leave to appeal pur-

to court order seeking leave to file,and Mrs Polyak must affix a copy of this order to the motion.Failure to comply strictly with the terms of this injunction will be grounds for denying leave to file. Claims considered malicious, frivolous or brought in bad faith may be grounds for civil contempt proceedings

The following procedures shall govern appeals in this court filed by Polyak until such time as the court may otherwise order.

Upon timely receipt of a complete petition for leave to appeal, the court shall direct the clerk of an appropriate lower court to transmit the full record of the under lying case. No further proceedings shall take place in this court, nor shall any further filings be accepted, until this court has reviewed the petition t determine whether Polyak's appeal presents a colorable claim. this injunction applies to all appeals and other actions commenced after the date on which this order if filed.

ENTERED BY ORDER OF THE COURT

s̄Leonard Green ji

APPENDIX B

In the United States District Court, Middle District of Tennessee at nashivlle,No. 1:98-0026. This is an original order.

Earlene Polyak v The Honorable Charles Burson; Frank Hulen Estate; Dora lee Hulen, and Wilma Lesnansky No. 1:98-0026.

Filed:February 12, 1998

Amended:February 17, 1998 to add parties The Honorable Jim Hamilton, Circuit and Chancery Judge; Jerald Wilson, Circuit Court Clerk;Dalton Mounger; and Geneva Frisbee, Clerk and master.

Amended to add orders:Chancery No.7951-96 Dismissal of Counter-Claim; 7951-96 Judgment on the Pleadings; Circuit Court No.CC: 452-98 on dismissed on February 10,1998, and Chancery No. 9751-96 Order for Sale on February 11, 1998.

Dismissed: December 15, 199 .Magistrate Judge William J. Hays Jr.

Dismissed:March 4, 1999,and June, 9,1999 Judge Altea A. Trauger. U.S. District Judge.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

FILED JULY 8,1998

v

No. 1:98-0026

THE HONORABLE CHARLES
BURSON et al.,

ORDER

Pending before the Court is plaintiff's objection to magistrate and Motion to Set Aside Order (Dkt No.390). Plaintiff objects to this court's order of May 20, 1998, in which it referred this case to the Magistrate Judge for entry for scheduling order, for decision on all pretrial, non-dispostive motions, and for reports and recommendations on all dispositive motions.(See Dkt No.37)

Plaintiff misunderstands the Court order. Plaintiff is correct to have a case tried by the Magistrate Judge is entirely voluntary. Plaintiff is correct that she is entitled to have case tried by court and/or jury.

The order referring this case to the Magistrate Judge for nondispositive, pretrial

does not disturb or violate plaintiff's constitutional right s.The merit of plaintiff's case will be tried and decided by this court. The Magistrate Judge will merely make preliminary nondispositive decisions and enter scheduling order for the expident conduct of the case.

Federal law provides that the court may designate a Magistrate Judge to hear and determine any nondispositive pretrial matter pending before the Court 28 U.S.C. 636(b)(1)(A). This Court may reconsider any such ruling they can show that it is clearly erronous to law Id. In addition, this court will decide all nondispositive matters, such as motions to dismiss or summary judgments and this Court will conduct the trial. Plaintiff's objections are overruled.

s/Todd Campbell
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE TENNESSEE

EARLENE POLYAK FILED JUNE 9 199

Plaintiff

v Civil Action No. 1:98-0026 Judge Trauger

CHARLES BURSON et al.,

ORDER

On April 23, 1999, Magistrate Judge ayes issued report and recommendation, recommending that counsel for defendants Frank Hulen, doar Lee Hulen and Wilma Lesnansky be awarded $1,687.50 in attorney fees. On April 30, 1998 Plaintiff filed a document entitled Second Objection and Demand Oral Argument to Dalton Mounger's Misrepresentation of Charges and Motion to Set aSide pursuant Rule 60(b) FRcivP.

To the extent this filing constitutes objections to Report and Recommensdation, the Court overules objections. The Report and Recommendation is hereby made the order of Court for reasons stated herein.

It is so ordered.

Enter this 8th day of June 1999.

s/Althea A Trauger
U.S. District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EARLENE POLYAL

Plaintiff

FILED MARCH 4 1999

v

Case No. 1:98-0026

THE HONORABLE CHARLES BURSON et al.,

Defendants

ORDER

Presently pending before the court is the Magistrate Judge's Report and Re commendation (R&R) entered December 5, 1998(Dkt.Ent. No. 51) to which Plaintiff has filed objection (DKt. Ent. No. 55) and supplemental objections (Dkt. No. 60).

Pursuant to rule 72(b) of the Federal Rules of Civil Procedure and Local Rule 302 this court is required to review the magistrate Judge's recommendation de nova Rule 72 (b) specifically states: the District Judge May accept, receive further evidence, or recommend the matter to the Magistrate Judge with instructions Fed. R. Civ. 72(b).

After fully considering the record in this case, including the Magistrate Judge's Report and Recommendation and objection that thereto, the court is of the opinion that the Magistrate Judge's findings and conclusions are correct and they are adopted and approved. More sepcifically, the court agrees that the plaintiff's lawsuit is barred by the doctrine of res judicata because allegations and claims arise from the same cause of action and allegations as in Hulen v Earlene Polyak No.1:96-0112M.D. Tenn. (wiseman J)(sic Hon.Thomas A. Higgins) and Polyak v Hulen 1:84-0083 M.D. Tenn.which were barred under res judicat doctrine.

Accordingly, defendants' motions to dismiss(Dkt. No. 16, 22, 26, and 29) are hereby granted, and Defendants Hulen Estate, Hulen, Lesnansky and Mounger's motion for sanction (Dkt. No. 4) is granted as to award attorney's fees.Defendants motions to strike plaintiff's motion for extension of time(Dkt. No.54 56) denied as moot.counsel for defendants shall

file f ee affidavit within 20 days of entry of this order, and the court refers awarding of fees to Magistrate Judge hayes.

The court further orders that plaintiff shall be required to obtain leave of the court to file any further actions in light of her repeated filings despite prior order of the court. After awarding of fees, this case will be dismissed with prejudice pursuant to Fed. R.41(a)(2).

It is so ordered.

Entered this 4th day of March 1999.

s/Altea A. Trauger
U.S. District Judge.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EARLENE POLYAK

Plaintiff

FILED DEC 15 1998

v

No. 1:98-0026

THE HONORABLE CHARLES BURSON et al.,

Defendants

REPORT AND RECOMMENDATION

1.INTRODUCTION

This civil action was referred to the Magistrat e Judge by Order entered May 20,1998 (Dkt. Ent. No. 37). The Magistrate Judge was directed to enter a scheduling order, decide all pretrial, nondispositive motions, and provide reports and recommendations on all dispositive motions.

Plaintiff Earlene Polyak filed this action 28 U.S.C. 1332, the federal diversity statute, originally against defendants, Honorable Charles Burson, prior Attorney General of Tennessee,now current Attorney General of Tennessee John Knox Walkup,Frank Hulen Estate,

Dora Lee Hulen, and Wilma Lesnansky concerning the family farm inherited from their mother, Rena, in 1976. In Polyak's amended complaint (Dkt. Ent. No.2) she adds as parties Jerald Wilson,Circuit Court Clerk, Dalton A. Mounger, and Geneva Frisbee, Clerk and Master.Polyak served process on Judge Jim Hamilton and the Governor of Tennessee although they are not named as parties in the captions or body of the original complaint or amended complaint.

In her amended complaint(Dkt. Ent No. 31) Polyak demands a return fo $690.00 from Buford Evans,which she contends is owed by Frank Hulen and Lesnansky for an illegal survey conducted fifteen years ago.Id at 175.Polyak further complains to set aside any leins on her property for an award of funds for attorneys Robert Boston and Boston Bates & Holt Id. at 177. Polyak also seeks to file a second amended complaint(Dkt. Eny Nos.27,28,31,34). Polyak later asserted a counterclaim against defendant Mounger for legal malpractice(Dkt 36

Pending before the Court are several

motions. The first motion to dismiss filed by the defendants Frank Hulen estate, Dora Lee Hulen, Wilma Lesnansky, and Dalton Mounger (Dkt Ent. No. 22) seeking dismissal of Polyak complaint and amended complaint contending the doctrine of res judicata bars Polyak's litigation Second, the defendants Wilson and Frisbee move to dismiss for the same reason as well alternatively moving for a more definite statement of facts as to their alleged acts or omissions(Dkt.No. 26). Third, the defendants Walkup, the Governor of Tennessee, and Jim Hamilton move to dismiss this action for failure to state a claim(Dkt. En.Nos. 16 29). Fourth, the defendants Hulen estate Hulen, Lesnansky, and Mounger move for sanctions against plaintiff for frivolous filing in violation of Fed. R. Civ.P. 11.

In response, Polyak reiterated that the defendants violated her federal rights due process, a jury trial, and equal treatment (sic Constit utional rights and laws)(Dkt. En.Nos. 27 and 32).

For reasons set forth below, the Magistrate Judge concludes that this action is barred by res judicata doctrine in light of Plaintiff's numerous attemptes to litigat the core claims in this action, in this cour Thus, the pending motions to dismiss should be granted as well as motions for sanctions.

II.ANALYSIS OF COMPLAINTS AND MOTIONS

According to her original complaint,thi action arises from state court proceedings relating to property in the estate of Rena Hulen to which Plaintiff claims ab interest (Dkt Ent.No.1 Orig. Complaint at 13).There i a reference to a removal of that state court action.

In her original complaint, Polyak alleges that she never agreed to the sale or ther partition of property from Rena Hulen Estate Id at 28. Polyak claims that none of the defendants contributed any labor or money for the removal or restoration and maintenance to the Rena Hulen estate Id 71. Polyak asserts that she paid over one third

BEST AVAILABLE COPY

of expenses on the estate and that she suffers from stress and anxiety from her numerous court appearances and personal involvement in in her suits, embarrassment in defending her constitutional rights, the loss of interest and investment, and the loss of everyday pleasures of life.

Polyak filed a Complaint and Jury trial Demand against Wilma lesnansky and Frank Hulen December 28, 1995, that was dismissed by the Chancery Court of Lawrence County,Tennessee on February 16, 1996. The state court dismissed the action because Polyak had already litigated dispute about a partition order in several courts and the avernments were substantially the same as the ones in the ones before the Chancery court. The Chancery Court concluded that Polyak's action appeared from the record to be frivolous , in bad faith,and vexatious.Polyak attempted to appeal the order of the Chancery Court, but she refused to file appeal bond, and her right to appeal expired.

Frank Hulen died on April 11, 1996, and

Dora Lee Hulen is Executrix of his estate and sole beneficiary under his will. Dora lee Hulen and wilma Lesnansky subsequently filed a complaint for Partition in the Chancery Court of lawrence County,Tennessee on May 10, 1996 to obtain an accessable and understandable order for partition of the family farm. On June 7, 1996, Polyak filed an Answer to Complaint, counterclaim and Jury Trial Demand in the Chancery Court and this Court.

This court construed the pleading as a notice of removal under 28 u.S.C. 1441 and and filed the pleadings as 1:96-0112. Polyak claims in her answer,complaint,counter-claim and her claim of a jury trial demand were ultimately dismissed by the Honorable Thomas A Higgins by order entered November 5, 1996 Hulen v Polyak No. 96-0112. Judge Higgins found the action barred by the doctrine of res judicata. Polyak appealed Judge Higgins order to the United States Court of Appeals for the Sixth Circuit(counter-claim 97-508).

During the pendency of the federal pro-

ceeding, on June 19, 1996, Dora Lee Hulen and Wilma Lesnansky filed a motion to Dismiss the counterclaim and a Motion for Judgment on the pleadings (sic in Lawrence County Court), in the action for partition on January 30,1998 (sic in lawrence County Court)motion was set for hearing for February(sic 2/10/98 Lawrence County Court. A copy of the notice of hearing was sent to the address that Polyak used in the filing that she made with the United States court of appeals for the Eleventh Circuit on December 18, 1997 and in a filing with the Court of Appeals of Tennessee Middle Tennessee, on January 16, 1998. On February 10, 1998, the Chancery Court of lawrence County Tennessee dismissed Polyak's Counterclaim(sic filed in U.S. District Court to U.S. Court of Appeals Sixth)granted judgment on the pleading and ordered the family farm sold in a partition sale (sic Public auction).

Defendants note that Polyak has had litigation pending in six different courts on the same claims (six all different claims,parties

that have already been decided in several court including the United States Court of Appeals for the Sixth circuit.The defendants further further contend that the doctrine of former suit pending applies because there are several lawsuits concerning the same issues pending, which prevents this court having jurisdiction of this case. Also, the defendants contend that Polyak fails to state any comprehensible claim upon which relief can be granted.

For the other defendants, Jerald Wilson and Geneva Frisbee rely upon the Motion to Dismiss and exhibits attached thereto filed by the defendants, Frank Hulen Estate,Dora lee Hulen, Wilma Lesnansky, and Dalton Mounger.Defendant Walkup,Attorney General of Tennessee, notes that the only mention of him is paragraph 59 of the original complaint(Dkt.ent. No.1) where Polyak stat es that she mailed a copy of a document dated January 27, 1998 to former Attorney General Charles Burson.Defendant Walkup Attorney asserts that there is no other mention of the Attorney General in the original

or amended complaint. Similar,the Governor of Tennessee and Judge Hamilton are not named in either complaint nor amended complaint.Judge Hamilton also asserts judicial immunity as well as the doctrine of res judicata. Polyak previously sued Judge Hamilton about partition of this property,and upon appeal the Sixth Circuit entered an order dismissing the action and entered an order on November 29, 1989, refusing to reopen the litigation against Judge Hamilton.

The Magistrate Judge finds that the allegations and claim in this action are derived from the claims and allegations Hulen v Earlene POlyak No. 1:96-0112. In that case, the Honorable Thomas Higgins referred plaintiff's motion to dismiss to the Magistrate judge to prepare proposed findings of fact and recommendation for dispositions.The Magistrate Judge found the following facts:

> Plaintiffs Dora Lee Hulen(Hulen) and Wilma Lesnansky (Lesnansky) originally filed this declaratory judgment action in the Chancery Court of Lawrence County against Earlene Polyak (Polyak)

aresident and citizen of Trenton, Michigan Plaintiff's seek a declaration on their right to hav: a partition of real property consisting of 42.5 acres house barnin Lawrence County, Tennessee. This property was a part of the estate of Frank Hulen(sic Earl R. Hulen and Rena Hulen)the parties father. The plaintiffs seek a declaration of their right to petition and SELL THIS PROPERTY,with the proceeds therefrom to be districbuted among the plaintiffs equally.

Response to plaintiff'scomplaint,Poly filed an answer and counterclaim in this Court.attaching a copy of the plaintiffs complaint in the state court action. This Court treated the defendant's papers as a removal petition 28 U.S.C. 1441.

In the answer part of her pleading Polyak alleges deprivation of her rights under the Fifth, Seventh and Fourteenth amendments(Dkt.En.No. 1p.2), and asserts claims under 42 U.S.C. 1981,1982,and 1983 Ld. Polyak also cites 28 U.S.C. 2043,but statute relates to handling funds by a Clerk.In addition to her federal claims, Polyak asserts state common law claims for fraud and musrepresentation by the plaintiff's counsel who is not a party. For relief, Polyak seeks damages and injunctive damages.

As to factual allegations, Polyak alleges that on December 28,1995, she filed a complaint that was dismissed and the Clerk and Master of the Court allegedly denied her appeal.According to Polyak's answer there were two unsucces ful,one of which involved an unappealable order. according to the allegations in her answer partitions and sale of property were attempted in 1981 or 1983,and between November 1987 and September 21,

1988.

In section of Polyak's pleading in this action containing her counterclaim these claims are for denial of constitutional right and interest under Tennesse Statute 29-27-117 Partition in Kind. counterPlaintiff contends that any order divesting her constitutional right and in terest in whole and equal right to enjoyment of Rena Hulen Estate be set aside pursuant to Fed.R. Civ.P 60(b)..Dkt Ent.1 Attachment thereto ,Answer Counterclaim and Jury Trial Demand p.3) In addition Polyak alleges a denial of her right to a jury trial by the State court and an appeal in earlier court proceedings by state court clerkId at p.4. For her denial of a jury trial claim ,the state allegedly ruled against Polyak,while Polyak had another action pending before before a jury or was to be tried by a jury Id. The dates of these court proceedings is alleged to be 1974(no allegation to 1974 action)or 1981. Id at 4. Polyak's denial of appeal charge refers to a dismissal of her appeal in state courts without prejudice because state court order challenged on appeal was unappealable.Id at 4.Polyak also challenges the transfer of federal tobacco alotment from this property without notice to her.

In their pending motion to dismiss, the plaintiffs argue that Polyak's counterclaim in this action is barred by the doctrine of res judicata in light of the prior adjudications of Polyak's right and legal interest in this property by the United States Court of Appeals for Sixth circuit and the state court .Plaintiffs' argue that the state courts have also determined Polyak's rights at issue hers, but that Polyak has repeatedly litigated these claims despite prior

against her. Due to the confusion caused by Polyak's vexatious conduct in the courts plaintiffs filed this declaratory judgment action to clarify the state court record.

In prior federal action cited by plaintiffs, the Sixth Circuit entertained nine court actions filed by Polyak this District, contesting the partition and sale of the property inherited from parties parent(s)DKt. Ent. No 3).The Sixth Circuit noted that failing to prevail in state court litigation, Mrs Polyak began her assault on the petition sale in federal court 1985.Id at p.2.The parties in the Sixth Circuit action included the plaintiff Lesnansky here and Polyak's brother,Frank Hulen. The Court of Appeals concluded:

> Additionally, a review of the long history of Mrs Polyak's litigation reveals that she is,once again, seeking to relitigate the partition sale of the family farm Although she is caliming the unconstitutiona 1 deprivation of a property interest, her claim is nothing more that recycled argument that could have been raised in 1976 during the property's partition. The same deprivation of a tobacco allotment argument has been argued on appeal at least four times, and sanctions against Mrs Polyak were imposed in Case No. 89-5469 case No.91-5655/5656/5657. which asserted her numerous cases be reopened on the basis of new evidence.

Id at p. 3. The Report and Recommendation concluded that under Tennessee and federal law, that action was barred under res judicata doctrine.Accord Polyak v Hulen 1:84-0083 M.D. Tenn. filed December 3, 1984.

III. CONCLUSIONS OF LAW

For the applicable principles of law,the Magistrate Judge adopts his discuiion in Hulen.

In actions under federal law,the doctrine of res judicata and collateral estoppel have long been invoked to bar an action that is based upon legal claims and /or facts asserted in a prior action. The res judicata doctrine bars parties from re litigating issues that were or could have raised in that action Allen v McCurry 449 U.S. 90 94 101 S Ct 411,66 L.Ed 2d 308 (1980). Under the collateral estopell doctrine "once a court has decided an issue of fact or law necessary to its judgment that decision may preclude relitigation of the issue on a different cause of action involving a party of the first case.Id at 94(citing Montana v United States 440 U.S. 147, 153, 99 S Ct 970,59 L Ed 2d 210 (1979).Federal law on res judicata and collateral estopel obtains if the prior action invilved a federal claim See Allen at 449 U.S. 94-95.

In the City of Canton Ohio v Maynard 766 F.2d 236 238(6th Cir 1985),the Court Appeals explained that generally, there two branches of res judicata doctrine.As a general proposition of law, there are two branches of res judicata claim preclusion and issue preclusion. Under claim preculision branch an earlier final judgment on merits precludes a party from raising an issue in new litigation that ahould have been advanced in earlier proceedings. Under the issue preclusion branch"parties are precluded from relitigating an issue of law or fact which was necessarily decided in a previous final judgment(emphasis added and citations omitted)Accord Childs v Trippett56 P3d 64

1995 WL 299042(6th Cir 1995)unpublished) Childs had previously filed suit against Wallace,Finley, and Roach in 1992 rasing the same issue presented in this case.Therefore Childs claims as to these defendant are barred by the doctrine of claim preclusion)(citations omitted).

The absence of identical parties in in prior action does not void the preclusive effects of the res judicata doctrine. Smith's issues relating to his parole revocations were properly dismissed under the doctrine of res judicata.Snith had a fair opportunity to fully litigate his parole revocation claims in a mandamus/ habeas corpus action brought before the Ohio court of appeals,Tenth Appellate District. Smith argues that claim preclusion doe not apply in this case because the defendants in the state action differed from the defendants in the instant case,However, both Caopts(as director) and Flannery(as parole officer)are privies of the OAPOA and thus satisfy the requirements of res judicata.Smith v Capots 78 F3d 585 1996 WL 99322(6th Cir 1996)

All of these claims appear to have been asserted in Polyak's 1985 federal actionand subsquent appeal,or could have asserted in the several actions culminated in her Sixth Circuit appeal quoted above. Polyak's claims in her counterclaim in that action include events allegedly occuring in 1981, 1983 and tobacco allotment claim were clearly presented and determined in court proceedings. The alleged partition and alleged denial of federal tobacco allotment claim were clearly presented and determined in that appeal.From the pendency ot this action in the state courts,there remains the prospect for appeals.

Given the nature of Polyak's counter claim and the allegations in her pleading the Magistrate Judge concludes that the Court should adopt the above quoted ratioale of the Sixth Circuit Court of Appeals that the doctrine of res judicata bars Polyak's additional attempt to determine matters previously determined against her in state and federal courts.Polyak claims in this action fall under th claim preclusion branch of res judicata doctrine and this action should be remanded to the STate Courts.

For these reasons, the Magistrate Judge recommends that the plaintiffs' asserted federal claims be dismissed with prejudice and that the plaintiffs' motion to remand this action to the state court be granted. Hulen et al v Polyak, No,96-0112(Dkt Ent. No. 10)Report and Recommendation at 4-6. Judge higgins adopted that Report and Redommendation and dismissed that action withprejudice Id at Dkt Ent. No.14 Order entered Novwmber 4, 1996.

The Magistrate Judge concludes that this action is yet another attempt by Polyak to relitigate the same issue. The Magistrate Judge concludes that Polyak's claim in this action are barred by the doctrine of res judicata and should be dismissed. the Magistrate Judge concludes,as did Judge wiseman,that Polyak's repeated filings of these claims violate Fed. R. Civ.P.11, and warrants attorney fees(sic)

The Magistrate Judge also concludes that any costsincurred in this action should be im posed upon the plaintiff Sales v Marshall,873 F.2d 115, 120(6th Cir.1989),and that Polyak should be required to obtain leave of the court to file any future any future actions.Fillpas v Lemons, 835 F 2d 1145 1146(6th Cir 1987). In light of Polayk's repeated filings despite prior court sanctions, this form of injunctive telief if necessary.

IV.RECOMMENDATIONS

For the reasons stated above,the magist-trate Judge recommends that the defendants' motions to dismiss(Dkt.Ent. Nos 16,22,26,and 29) be granted and that the defendants, Hulen Estate, Hulen, Lesnansky, and Mounger's motion for sanctions Dkt Ent.No. 41) be granted so as to award them their attorney fees in accord-ance with Local rule 13(not Fed Statute).The Magistrate Judge further recommends that costs be assesed against plaintiff and that the Clerk be directed not to accept for filing any papers presented to the Clerk without prior

Order of the Court. Under Fed Rules of Civil Procedure, any party has ten(10) days from the receipt of this Report and Recommendation in which to file any written objections to this Report and Recommendation, with the District Court. Any party opposing said objection shall have the (10) days from the receipt of this Report in which to file any onses to said objections.Failure to file specific objections within ten(10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v Arm, 474 U.S. 140 106 S Ct 466 88 L Ed 2d 435(1985), reh'g denied 474 U.S. 1111(1986).

Entered this the 11th day of December, 1998.

s/William J Hayes Jr.
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLTAK

Plaintiff

FILED MAR 13 1998

v

No. 1:98-0026

THE HONORABLE CHARLES
BURSON et al.,

ORDER

On March 14, 1998, a court o dered auction will be held in Lawrence County to dispose of the estate of Rena Hulen,the plaintiff's deceased mother. The plaintiff has filed an application March 6, 1998(Dkt. Ent.No 5)for an injunction to stay auction.
in exercising its discretion to grant a temporary injunction, a district court must weigh (1) whether the plaintiff has shown a strong substantial liklihood of success on merits(2) whether the plaintiff has shown irreparable injury (3) whether the public interest would be served by the issuance of a preliminary injunction. Friendship Material Inc.,679 F2d 100 102(6thcir. 1982).

The plaintiff has made no strong or substantial showing that she will prevail on the merits. Nor has she demonstrated that injunction needed to prevent irreparable harm.The auction may result in a financial loss to plaintiff. this loss may later be recovered as damages should she be successful on merits.

In any event, a preliminary injunction can not issue without notice to all adverse parties Rule 65(a)(1) FEd.R.Civ.P.. The certificate of service accopmpanying the Plaintiff application indicates that only (sic only two of six defendants) were served with a copy of the pleading.The plaintiff's application for stay of the auction lacks merit and is hereby denied.

It is so ordered.

s/Todd Campbell
U.S. District Judge

APPENDIX C

In the Chancery and Circuits Courts of Lawrence County, Court of Appeals and the Supreme Court of Tennessee

Petition for rehearing application for permission to appeal No.M199-001-00146-SC-R11.

Denied: September 13, 1999

In the Court of Appeals of Tennessee petition for writ of mandamus for rescual No.01A-9503-CH-00133.

Filed:November 5, 1999.

No.Ruling on the order for the Honorable Jim T. Hamilton rescual.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

EARLENE POLYAK

V

DORA LEE HULEN
AND WILMA LESNANSKY

FILED NOV 29 1999

No. M199-00146-SC-R11-CV

Lawrence County Appeal No.
01A-01-9803-CH-0133

Lawrence County Chancery No.
7951-96 and 7736-95

ORDER

The plaintiff, Earlene Polyak has filed a petition to rehear her application for permission to appeal, which this court denied on September 13, 1999. Upon reconsideration of the application for permission to appeal and the entire record in this cause, the court concludes that the petition is to rehear is should be and is hereby denied.

PER CURIAM

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

DORA LEE HULEN AND
WILMA LESNANSKY

Plaintiff JURY TRIAL DEMAND

V No.7951-96

EARLENE POLYAK /
EARLENE POLYAK

Countr-Plaintiff

V

FRANK HULEN ESTATE,DORA
LEE HULEN AND WILMA
LESNANSKY /

REQUEST TO RECUSE

Counter-Plaintiff, requests that the Honorable Jim Hamilton recuse from the above and all cases regarding her and her property This request i grounded in experience in which Judge Hamilton has never granted a motion, petition,or order in which she has requested relieffrom the court, and Judge Hamilton takes petitions addressed to other and denies relief requested from the Court.

In view of the above, Plaintiff believes that the Judge prejudiced to her, personally dislikes her, and is too biased

to local persons to invoke justice in this Court for any relief to her.

I certify that a true copy of this request has been mailed to Dalton Mounger 806A East Garden Street, P.O. box 1468, columbia Tennessee 38402 on the 4th day of June 1996.

Respectfully submitted,

Earlene polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(734) 676-3364

COURT OF APPEALS
401 7th Ave.N.Supreme Court Building
Nashville, Tennessee

POLYAK EARLENE
145 Lakeside Drive
Jupiter, Florida 33458

EARLENE POLYAK V DORA LEE HULEN & WILMA
& WILMA LESNANSKY NO.01A-9803-CH-00133

NOTICE
PLEASE TAKE NOTICE OF THE FOLLOWING

FILE DATE 10/5/99
PETITION FOR WRIT OF MANDAMUS FOR RECUSAL

CRCIL CROWSON JR CLERK
COURT OF APPEALS 615/741/2681

CC:
POLYAK EARLENE DALTON MOUNGER